

However, he also told Werlinger that Salem intended to terminate the LMA as of Midnight, Saturday, May 6th and had no concern at all regarding Mr. Werlinger's warning against tampering.

Mr. Werlinger immediately contacted KENR Management counsel Ray Fisher in Austin, Texas regarding the situation. Mr. Fisher informed Werlinger that one option open to KENR Management was to attempt to secure a temporary restraining order against Salem enjoining Salem from terminating the agreement.

On Friday, May 5, at approximately 3:30 pm, state district judge Catherine Kennedy issued a temporary restraining order which was to hold until a hearing on the evidence in the case could be held on Monday, May 8th. Following the judge's ruling, Mr. Werlinger appeared at the Salem offices to offer a compromise, suggesting that Salem and Chameleon split the 22 remaining days in May down the middle with Chameleon remaining in place and programming KENR until midnight, May 19th and Salem assuming complete operation of the station at that point. Under that plan, said Werlinger, the programmers now on KENR would have time to inform their audiences that a move to 1270 kHz was underway and make a smooth transition. Mr. Clark told Mr. Werlinger that Salem would accept such a plan only if KENR Management would agree to a price of \$25,000.00 for the 19 days of programming. Werlinger flatly refused to discuss what he considered extortion (under the \$20,000 a month agreement, the 19 days would have netted Salem \$12,258.06) and informed Mr. Clark he would see him in court on Monday.

Approximately an hour prior to Judge Kennedy's issuance of the temporary restraining order, John Vu at the FCC had issued the STA sought by Chameleon for the Riceville School Road site, granting 1,000 watts day and 100 watts night operations for KIOX (KFCC).

Immediately upon grant of the STA, a group which included family, friends, employees, and volunteer programmers set about erecting the broadcast site for KFCC's temporary authority to operate in southwest Houston. By midday Sunday, May 7th, the transmitter had been placed in a portable building, necessary program lines had been established. The ground system and folded unipole had been installed on the tower, and KFCC had the ability to operate from the site. There had been no confidence that Salem would abide the terms of the temporary restraining order, an around the clock effort was made to bring the transmitter site to operational status. On Monday morning, May 8, 1995 at 6:00 am, the new site was turned on and KENR Management and Chameleon began simulcasting programming which was being fed to KENR on KIOX (KFCC). Programmers were informed that they should begin informing their listeners about the move to 1270 kHz and all programmers began taking such action. Both stations were identified properly at the top of each hour.

That same afternoon when the two sides met at the Harris County Courthouse, Salem's attorney approached Mr. Werlinger and Fisher and asked if a settlement might

be reached prior to the scheduled 1:30 hearing. Mr. Werlinger restated his Friday plan under which KENR Management would be allowed to continue its programming through May 19th, leaving the station to Salem thereafter and paying a per diem based upon \$20,000 for the full month.

Through several back and forth conversations, Salem stated through its attorney that it would accept such a compromise if KENR Management would be a fee of \$15,000.00 for the 19 days. After consultation with attorney Fisher, Mr. Werlinger agreed to pay the higher amount in order to remain a programmer through May 19th, giving his programmers time to make a reasonable transition from 1070 kHz to the new 1270 kHz location.

During the course of the negotiations, no mention was made by either Salem's counsel or by Jamie Clark, who was present, that Salem had any problem with Werlinger's stated goal of announcing on KENR that programming was moving to the new frequency. However, Clark informed Werlinger that one of KENR Management's clients, a Vietnamese language program which originated at the Vietnamese owned studios and was fed to the KENR Management studios via telco loop, had terminated their loop to the KENR Management studios on Friday, May 5th, and had reestablished the loop to the Salem studios that same day. Mr. Clark assured Mr. Werlinger that Salem would place the program on the air from the Salem studios for the two weeks until May 19th, removing the telco feed from the KENR Management studios at exactly 2:00 pm, placing the Vietnamese program on the air and then returning KENR Management to the air at 6:00 pm.

Shortly after the conversation with Mr. Clark, both parties appeared before a state district court judge and entered the agreement into the court's records. Mr. Werlinger handed Mr. Clark a check in the amount of \$15,000.00 and returned to his offices to begin contacting programmers and informing them of the settlement. Over the next six hours, the more than forty programmers on the station were contacted and told a settlement leaving KENR Management's programming in place on KENR through Friday, May 19th had been reached and offering whatever assistance possible in assisting those programmers with the change.

As events over the next 24 hours would show, this was nothing more than another Salem trick. Actually, Salem had already contracted with the Voice of Vietnam (VOVN) for airtime commencing at 4:00 pm in the afternoon, not the 2:00 pm start under the KENR Management contract with VOVN.

In any event, this revelation that the Voice of Vietnam (VOVN) broadcast would be delivered to the Salem studios beginning that day was proof positive that Salem had indeed been tampering with KENR Management clients. Relocating a telco loop through Southwestern Bell takes 10 to 12 working days which means VOVN would have had to have placed their order to drop their loop to the KENR Management studios and establish the loop to the Salem studios some five miles away during the week of April 24 thru the

29th in order to have a working line on May 8th. VOVN needed and obviously received solicitation from Salem to make such a change.

Jamie Clark lied when he claimed Salem had not tampered with KENR Management's client base. His actions on behalf of Salem created the crisis in which KENR Management/Chameleon found themselves and they were to continue. They continue to this day.

Although KENR Management had often worked with VOVN on receipt of payment for its airtime, taking late payments and even reducing fees in order to keep the Vietnamese program on the air, the situation now was different. Werlinger told VOVN that payment must be received for May 1st thru May 19th or VOVN would not be allowed on the air. A VOVN spokesman assured Werlinger that payment would be forthcoming before noon. When the promised payment was not received by 12:45 pm, Werlinger called the Salem offices and asked to speak with Mr. Clark to inform him that VOVN would not be on the air that afternoon. Mr. Werlinger was informed that Mr. Clark was in a conference and could not speak with Werlinger just now.

At 2:00 pm, Salem removed KENR Management's programming from the air and commenced a simulcast of the Oliver North talk show with its sister FM (KKHT). Repeated calls from Werlinger to the Salem offices resulted in no response from Mr. Clark. KENR Management had been removed from the air in direct violation of an agreed court order reached and entered into state district court records less than one day earlier.

At 3:15 pm, Werlinger drove the five miles to the Salem offices where he received a one paragraph letter from Mr. Clark which stated that KENR Management was in violation of its contract with Salem as a result of its identifying another radio station on KENR and as a result, KENR Management was being removed from the air immediately. Following the end of the Oliver North Show, VOVN commenced programming in its new time slot on KENR.

No one can read the events which occurred during this time and come to any other conclusion than Salem Communications was exercising every means possible to destroy KENR Management/Chameleon. Only around the clock efforts on the part of virtually everyone involved prevented Salem's success in this enterprise. But, Salem was far from finished in its efforts.

With its loss of KENR as of 2:00 pm, Tuesday, May 9th, KENR Management was once again faced with going to its programmers to explain what had been intended to be a mortal blow by Salem. In the days that followed, only two other programmers followed VOVN to Salem, much to Salem's obvious dismay. Programmers reported repeated contacts from Mr. Clark offering a wide variety of inducements to secure their return to 1070 AM. It should be remembered that all the programmers with KENR Management had been on 1070 AM, the place to which Mr. Clark was now attempting to lure them

back. And, with only a few exceptions, all decided to make the change with now Chameleon Radio Corporation to KFCC. But again, Salem was not finished.

On Friday, May 12th, John Vu contacted Mr. Werlinger by telephone and informed him that the Commission had received complaints regarding interference to KWHI at Brenham, Texas and as a result, he was reissuing the STA to reduce KFCC's power to 300 watts daytime and 50 watts at night. Mr. Werlinger asked Mr. Vu if the complaint had come from KWHI and whether they had been received at the Houston Field Operations Office of the FCC or in Washington. Mr. Vu replied that the complaints had been by telephone to the AM Branch in Washington and he was unsure of who was filing the complaints. He said he was simply responding to the protest.

The following Monday, Mr. Fred Lundgren, who had been acting as project manager on the STA construction project, telephoned Mr. Tom Whitehead, the licensee of KWHI to discuss what Mr. Lundgren assumed to be Whitehead's complaints. Mr. Whitehead told Mr. Lundgren that he was completely unaware of the STA operation of KFCC and that he personally had heard of no listener complaints regarding increased overlap between the 1270 kHz and 1280 kHz signals. He suggested; however, that his son, Mark Whitehead, who serves as the chief engineer for KWHI might know more.

Mr. Lundgren contacted Mark Whitehead at his office in Bryan, Texas. Mark Whitehead stated that he had been aware of some moves on the part of KFCC, but that he also had received no complaints from listeners. The conversations with both men were very cordial and both Tom Whitehead and his son, Mark, indicated they had filed no complaint.

Mr. Lundgren assured both men that Chameleon was working diligently to complete a form 301 request which would use a directional antenna to remove not only any potential new overlap between the two stations, but virtually eliminate any previously licensed overlap. Lundgren stated that Chameleon was keenly attuned any potential problems the STA operation might cause to KWHI and offered to take steps necessary to remove potential problems.

Instead of talking to the licensee of KWHI, Chameleon should have suspected the by now familiar presence of Salem. After operating seven more days, on Monday, May 22nd, Chameleon received a fax from Mr. Vu ordering KFCC to cease operations at its STA site due to the lack of a city grade signal over KFCC's city of license, Bay City, (Mr. Werlinger would return later that week from Washington, D.C. to find Salem's protest in his mail).

It was only after very careful consideration that Mr. Werlinger made the decision to disregard Mr. Vu's order. The fact of the matter was KFCC continued then as it does now, to be the only outlet in Houston for dozens of international language programmers. At the time of Mr. Vu's order, the Voice of Greece program was promoting the city's largest ever Greek cultural concert, an annual event in other large cities which features

bands and performers from Greece on tour in the U.S. It is also an event which, until this year when radio promotion was possible, had not made a stop in Houston, Texas. Other programmers such as Radio South Asia were planning cultural events. The Voice of Sanatan Hinduism was covering the completion of a new Hindu worship center, and the list went on. In its opinion, Chameleon's responsibilities to its programmers outweighed the potential adverse consequences of not complying with the May 19th letter rescinding the STA.

At 6:00 am Tuesday, May 22nd, Mr. Werlinger boarded an airplane for Washington, D.C., his mission to convince whomever he needed to convince at the FCC that the order rescinding the STA must be overruled. Following the chain of command, Werlinger met first with John Vu and his immediate supervisor prior to being introduced to AM Branch Chief James Burtle. In his meeting with Mr. Burtle in which he pointed out that a large number of currently operating AM STA's do not cover their respective cities of license with 5 mV/m contour and are yet allowed to continue to operate, Mr. Werlinger attempted also to point out that the 1000 watt STA came much closer to placing the required signal over Bay City than does the 300 watt STA. Mr. Burtle refused alter the decree to cease operation from the STA site.

Werlinger than turned to Audio Services Division Chief Larry Eads with whom he met on Thursday, May 25th. In his half hour long conversation, Mr. Werlinger explained many of the details of this letter including the fact that, at closing, Chameleon Radio Corporation leased the property in Bay City back to Landrum Enterprises, Inc. for purposes of operating KIOX-FM from the site. Mr. Werlinger explained it had never been the intention of Chameleon to continually operate from the Bay City site inasmuch as the original plan for KIOX (KFCC) was to relocate the transmitter site north and east of Bay City. The result of the conversation was an action by Mr. Eads staying the effectiveness of the May 19th order.

Meanwhile, back in Houston, Jamie Clark was making repeated calls to several KENR Management/Chameleon clients assuring them that KFCC would be off the air "in just a few hours," and exhorting them to purchase airtime back on KENR "while there is still space left for you." It should be noted that only secular programmers were contacted. None of the programmers on the station which represented religious beliefs other than Christian ever reported being approached by Salem.

In Washington, Mr. Werlinger left Mr. Eads' office stating first, that an application to make the transmitter site used in the STA a permanently licensed site would be forthcoming within a week; second, that the application would specify a 10 kw operation for KFCC and finally that he, Werlinger, knew of no objection to the STA site on the part of the licensee of KWHI in Brenham, Texas.

The form 301 request in fact, eleven weeks from being filed due mainly to the inability of Chameleon to secure a suitable site within the Addicks Reservoir for the night array. Though the cooperation of the Army Corps of Engineers was forthcoming, the

efforts to reach an agreement on a site inside the reservoir did not bear fruit. Urbanization in all areas immediately surrounding Addicks prevent a site nearby.

The form 301 was also delayed by the fact that in spite of its initial reaction to the KFCC STA, the licensee of KWHI had a change of mind and filed an objection to the STA operation. As it had its application and exhibits originally prepared, KFCC was prepared to propose a 10 kw daytime operation. Most, but not all of the currently licensed overlap between the two stations would have been eliminated by the 10 kw directional operation of KFCC. However, in fulfilling its verbally expressed commitment to Mr. Whitehead to respond to their concerns and following consultation with KWHI technical consultant John Furr of John Furr and Associates, the antenna system was redesigned and the power dropped to the 2.5 kw operation now proposed in the currently pending Chameleon application. Mr. Furr has received a copy of the currently pending application and he has indicated his review of the proposed facility shows virtual elimination of the .5 mV/m overlap between the two stations.

The enclosed documents clearly show Chameleon Radio Corporation was the licensee of KFCC when it made its initial request for STA. Closing occurred on April 20, 1995. Also enclosed is a copy of the lease agreement with option to purchase the land on Riceville School Road in rural Harris County, Texas upon which the current STA site and proposed permanent site now sits. That document was executed April 28, 1995.

It has been demonstrated in this correspondence, that it had been Chameleon's intention to make technical changes in KFCC through the routine course of filing a form 301 request and then constructing the approved facilities in time to be on the air prior to the termination of its one year LMA with Salem. But, a set of events occurred which simply made such action impossible. Faced with a ceaseless onslaught from Salem, Chameleon had no choice but to act quickly and decisively, making creative use of whatever rules presented themselves in order to save both its business and the outlet it had created for the international community in Houston to communicate with itself through free mass communication.

Salem has continually shown it will do virtually anything to reach its goal. It will make and then disregard any commitment including those made in district court, make any representation to Chameleon programmers it wishes to lure away whether true or not including tampering with those clients in direct violation of contractual commitments to the contrary, and complain about interference allegedly caused to radio stations in which it has no ownership interest.

Salem in fact, has no standing in the current STA extension request. It has no ownership interest in either KWHI, Brenham, Texas or KESS, Fort Worth, Texas; therefore, any question of prohibited overlap would in no way effect a Salem owned radio station. None of the principals with ownership interest in Salem live in Houston, Bay City, Brenham, Fort Worth, or KFCC's proposed city of license, Missouri City. In fact, none of Salem's principals even live in the state of Texas.

The proposed changes in KFCC in no way effect Salem's KENR facilities (KENR operates on 1070 kHz, KFCC on 1270 kHz). Salem's only interest in the current situation is that of a competitor who has thus far been thwarted in its efforts to destroy first KENR Management and now Chameleon, actions which face challenge in district court.

If ever there was an example of strike activity on the part of a licensee, Salem's activities represent a text book case. Salem first set up a situation in which its victim was forced to take dramatic steps to save itself from destruction and then it was Salem who cried foul when those steps were taken. Salem is without technical standing to interject itself into the current situation. Neither the current STA operation nor the proposed changes in the KFCC facilities create any technical impact on Salem owned facilities. Therefore, in its continuing litany before the Commission, Salem is attempting to use the Commission's rules to stifle competition. With its activities in the marketplace, Salem calls into question its own character and openly invites an examination of its qualifications to be a licensee. Salem is blatantly engaged in strike activity and should be held accountable for same.

With regard to overlap to KWHI, the currently operating KFCC STA site (300 watts non-directional) operation reduces the overlap of the 0.50 mV/m contours of the two stations by more than 50%; therefore, it is not possible to arrive at the conclusion that KWHI is being damaged by KFCC's STA operation. Additionally, if ever there was a meritorious proposal for decreasing grandfathered overlap, the currently pending KFCC application provides that example.

As currently licensed, KFCC and KWHI endure approximately 1,785 square miles of overlap between their respective .5 mV/m contours. KWHI's .5 mV/m is licensed to receive 3,465 square miles of overlap from the .25 mV/m contour produced from the licensed KFCC site at Bay city and KFCC is licensed to receive 5,123 square miles of overlap to its .5 mV/m contour from the .25 contour of KWHI.

In KFCC's current proposal, the daytime directional array would generate no new overlap between the .5 mV/m contours of the two stations. Rather, as proposed the currently licensed .5 mV/m overlap would be reduced to approximately 149 square miles (from 1,785 square miles as noted above), a reduction of 91.65% from currently licensed .5 mV/m overlap.

Additionally, the KWHI .5 mV/m contour would receive 83.6% less overlap from the proposed KFCC .25 mV/m contour (3,465 square miles now vs 568 square miles as proposed). KFCC's received overlap .5/.25 mV/m would be reduced by 65.33% (5,123 square miles vs 1,775 square miles as proposed).

Even with its limited 300 watt day/50 watt night STA operation, KFCC continues serve as a platform for international language programmers as does no other Houston area radio station. In fact, with its southwest side transmitter location, KFCC provides an interference free signal to several international enclaves which do not receive such service from KENR on 1070 kHz. The result is that KFCC remains a viable, and in many cases, the only broadcast alternative. In fact, the recent purchase and format change of KMPQ AM/KLTO FM in suburban Rosenberg resulted in the deprivation of programming to the Central and South American communities of southwest Houston. Though nearly a dozen stations in Houston provide programming to the Mexican-American community, only the programming on KMPQ/KLTO served the much smaller but still well represented Guatemalan, Costa Rican, Honduran, and El Salvadoran communities. No fewer than five of those programmers have now migrated to KFCC as well as programmers serving the Peruvian and Argentinean communities of South America.

And, it cannot be argued that programmers removed from the air by KFCC's loss of its STA would find another home elsewhere in the market. Salem does not covet the Islamic teachings represented by Radio South Asia's 'World Religion Day' broadcast and it obviously has no interest in the Hindu and Buddhist teaching represented in other KFCC programming. While no doubt, several of KFCC's secular, English language talk programs are of prime interest to Salem, the numerical majority of KFCC's programmers would have no place take their programming absent KFCC.

The conclusion to be drawn from all these circumstances is that, while KENR Management/Chameleon have gone to the outer limits in dealing with the Commission's rules regarding Special Temporary Authorization, each was only reacting to the predatory and destructive activities of Salem. The loss not once, but twice in less than six months of an LMA presented an extraordinary circumstances. Remaining patient under such circumstances would have guaranteed the destruction of an otherwise viable and profitable enterprise providing a needed service to a series of minority communities previously completely neglected in the market.

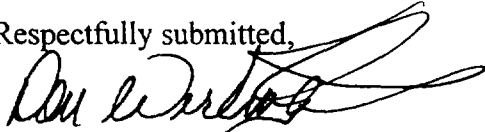
The argument that KFCC's STA sets a dangerous precedent is also to be rejected. Chameleon's activities resulted in the maintenance of unique and needed broadcast outlet in one of the nation's largest markets, not to mention providing the economic survival of yet another AM station which had previously produced no method of income necessary to sustain itself.

Finally, KFCC's proposed technical changes improve the first adjacent overlap problem with KWHI to the point of nearly eliminating all .5 mV/m overlap between the two stations. In addition, the proposed change in the city of license to Missouri City, Texas will provide one of the fastest growing communities in the southwest part of the nation with its first locally licensed broadcast station. As a result, KFCC's application deserves immediate study and quick action by Commission staff. In the meantime, KFCC should be allowed to continue to provide the service to the international



community it has been serving for more than a year through its predecessor KENR Management Company and now through Chameleon Radio Corporation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Don Werlinger", with a large, sweeping flourish extending to the right.

Don Werlinger, President



APPENDIX 12

7  
FCC MAIL SECTION

350

AUG 14 10 18 AM '95

DISPATCH

**FEDERAL COMMUNICATIONS COMMISSION**

**Washington, D.C. 20554**

August 11, 1995

**In Reply Refer To:  
8910-WGB**

VIA TELECOPIER AND CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Don Werlinger,  
President  
Chameleon Radio Corporation  
10865 Rockley Road  
Houston, Texas 77099

In re: KFCC(AM) Bay City, Texas  
(formerly KIOX(AM))  
Request for extension of Special  
Temporary Authority

Dear Mr. Werlinger:

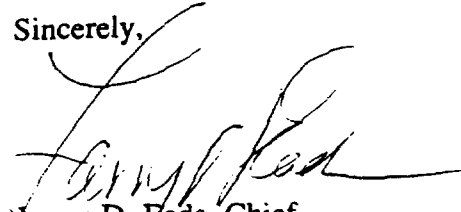
On May 5, 1995, the Commission granted Chameleon Radio Corporation ("Chameleon") a special temporary authority ("STA") to operate station KFCC(AM) at variance from its licensed parameters at a site located in Harris County, Texas ("Harris County Site"). By Commission letter dated August 11, 1995, which was both faxed and mailed to your office, you were advised that your STA for operation at the Harris County Site had expired and that you were to cease operation immediately from that location. Vivky Scott, an employee of Chameleon Radio, acting on your instructions, faxed us a copy of your response to our July 25, 1995 letter and also a copy of your request for an extension of the STA with a FCC/Mellon date stamp of August 4, 1995. Thus, effective immediately, the STA for operation at the Harris County Site with the facilities authorized in our letter of May 12, 1995, is reinstated and extended pending further consideration of your response to our letter of July 25, 1995 and action on your request for extension of your STA.

<b>Federal Communications Commission</b>	
Docket No. <u>96-173</u>	Exhibit No. <u>App 12</u>
Presented by <u>Chameleon</u>	
Disposition	Identified <u>X</u>
	Received <u>X</u>
	Rejected <u>          </u>

012

We reiterate that it is necessary for you to serve copies of your response to the July 25, 1995 Commission letter and your August 4, 1995 STA request on James P. Riley, Esquire, Counsel for South Texas Broadcasting and John Joseph McVeigh, Esquire, Counsel for Tom S. Whitehead and furnish us with a certificate of service.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Eads", with a long horizontal flourish extending to the right.

Larry D. Eads, Chief  
Audio Services Division  
Mass Media Bureau

cc: James P. Riley, Esquire  
Counsel for South Texas Broadcasting  
John Joseph McVeigh, Esquire  
Counsel for Tom S. Whitehead  
CIB Houston



## APPENDIX 13

AM BROADCAST APPLICATIONS ACCEPTED FOR FILING AND NOTIFICATION  
OF CUT-OFF DATE

Report No. A-198

Released: September 6, 1995

CUT-OFF DATE: October 6, 1995

Notice is hereby given that the applications listed in the attached appendix are hereby accepted for filing. They will be considered to be ready and available for processing after October 6, 1995. An application in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on October 6, 1995 which involves a conflict necessitating a hearing with any application on this list must be substantially complete and tendered for filing at the close of business on October 6, 1995. Petitions to deny any application on this list must be on file with the Commission no later than the close of business October 6, 1995.

BMP-950307AD WBAJ Blythewood South Carolina

Michael B. Ginter

Has: 880 kHz 1.6 kW DA-D

Req: 890 kHz, 0.001 kW II kW (9 kW-CH) ND-1. U

BP-950322AB KHNC, Johnstown Colorado

Donald A. and Sharon E. Wiedeman

Has: 1360 kHz 0.45 kW, 0.5 kW-LS, DA-2 U

Req: 1360 kHz 0.45 kW, 4 kW-LS, DA-2, U

BP-950531AC WTCM, Traverse City, Michigan

WTCM Radio Inc

Has: 580 kHz, 0.5 kW, 5 kW-LS; DA-2, U

Req: 580 kHz, 0.8 kW, 15 kW-LS, DA-2, U

BP-950711AC New, Gunnison, Colorado

John Harvey Rees

Req: 1490 kHz, 1 kW, ND-1, U

BP-950719AB WBZT, West Palm Beach, Florida

American Radio Systems License Corp.

Has: 1290 kHz, 5 kW, DA-N, U

Req: 1290 kHz. 4.9 kW 10 kW-LS, DA-2. U

BP-950804AC KFCC, Bay City, Texas

Chameleon Radio Corporation

Has: 1270 kHz, 1 kW. DA-N. U (Bay City, TX)

Req: 1270 kHz, 0.85 kW, 2.5 kW-LS, DA-2, U(Missouri City, TX)

Federal Communications Commission	
Docket No.	96-173 Exhibit No. <u>app 13</u>
Presented by	<u>Chameleon</u>
Disposition	Identified <u>X</u>
	Received <u>X</u>
	Rejected <u>      </u>
Reporter	<u>YJ</u>
Date	<u>2-24-97</u>





APPENDIX 14

CC MAIL SECTION

SEP 11 10 01 AM '95

DISPATCHED BY

239

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

SEP 8 1995

In Reply Refer To:  
1800B3-KDY

VIA TELECOPIER AND CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Don Werlinger,  
President  
Chameleon Radio Corporation  
10865 Rockley Road  
Houston, Texas 77099

In re: KFCC(AM) Bay City, Texas  
(formerly KIOX(AM))  
Notice of Special Temporary  
Authority Cancellation

Dear Mr. Werlinger:

We have on file Chameleon Radio Corporation's ("Chameleon")<sup>1</sup> August 4, 1995 request for extension of Special Temporary Authority ("STA") to operate KFCC(AM), Bay City, Texas,<sup>2</sup> at variance from its licensed parameters.<sup>3</sup> As set forth below, we deny Chameleon's request for extension.

Background. On April 18, 1995, the Commission approved an application assigning

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<sup>1</sup> Don Werlinger ("Werlinger") is listed in the Commission's records as President of Chameleon.

<sup>2</sup> Station KFCC(AM) is licensed to serve Bay City, Texas, on 1270 kHz with a transmitter power of 1000 watts (DA-N), from a site 5.8 km northeast of Bay City, Texas ("Bay City Site"). The Commission's records indicate that KFCC(AM)'s main studio is located at the Bay City Site.

<sup>3</sup> Two Houston-area licensees, South Texas Broadcasting, Inc. ("South Texas") and Tom S. Whitehead ("Whitehead") have filed objections to the STA, alleging, among other things, that the facilities specified in the subject STA cause interference to their respective stations. Both objections remain pending. By letter dated September 1, 1995, South Texas requested withdrawal of its objection.

KFCC(AM) from Landrum Enterprises ("Landrum") to Chameleon (BAL-950216EA). On April 21, 1995, Chameleon, filed the subject request for STA. Chameleon claimed a need to relocate the station's transmitter "[d]ue to the loss of its currently licensed site." Chameleon proposed to operate from "rural southwest Harris County" ("Harris County Site") at coordinates N29-38-10, W95-32-22 and requested authority to operate nondirectionally at 1000 watts day, 250 watts night. Chameleon further proposed "to utilize a [180'] tower supporting a folded unipole antenna system." Chameleon also stated that, on April 20, 1995, it sought "FAA authority to construct." Claiming that the STA operation will produce no prohibited overlap - "with the exception of KWHI(AM), Brenham, Texas" - Chameleon stated that it intended to file an FCC Form 301 application to seek permanent authority for operations from the Harris County Site. Pursuant to an oral conversation with the Commission staff, Mr. Werlinger was informed that this STA could not be granted because it appeared to involve construction of a new tower.

In response, on May 2, 1995, Chameleon amended its STA request. Chameleon submitted an amended Figure E-1 correcting the coordinates of the above-noted "existing 180' tower" to N29-38-14, W95-32-24. Chameleon stated that "[t]he tower in our original proposal will be the center tower of what will be a three tower array." Chameleon also stated that it intended to file an FCC Form 301 "within 30 days of placing the STA on the air."

On May 5, 1995, the Commission staff granted Chameleon STA to operate with the parameters described in the initial STA request. That letter indicated that the staff believed the STA site to be only 0.25 km from the licensed site.<sup>4</sup> After further study, though, on May 12, 1995, the Commission staff superseded its May 5 letter to instead specify the amended STA tower coordinates and to reduce KFCC(AM)'s operating power to 300 watts daytime and 50 watts nighttime because of potential interference that was called to the staff's attention. Subsequently, on May 18, 1995, the Commission staff issued a letter to Chameleon rescinding the STA ("Rescission Letter"). The Commission staff stated that further study had revealed that KFCC(AM) could not cover its community of license, Bay City, Texas, from the Harris County Site in apparent contravention of 47 C.F.R. 73.24(i). The Recision Letter, however, was stayed on May 25, 1995 by action of the Chief, Audio Services Division, Mass Media Bureau, pending further clarification of the record.

By letter dated July 25, 1995, the Chief, Audio Services Division requested Chameleon to respond to several questions regarding the circumstances giving rise to Chameleon's necessity for STA, facts concerning KFCC(AM)'s licensed facility and construction efforts taken pursuant to the STA. See July 25, 1995 Letter From Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger ("Inquiry Letter"). The Inquiry Letter requested

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<sup>4</sup> The May 5th letter was incorrect. The actual site being requested by Chameleon was 80 km from its licensed site. Because Chameleon's amended Figure E-1 depicted an existing 180' foot tower as being "0.25 km from [KFCC(AM)'s] licensed site" the staff inadvertently assumed that the proposed STA site was actually only 0.25 km from the Bay City Site.

Werlinger to:

1. Provide specific details concerning: (a) the circumstances under which Chameleon "lost" the Bay City Site and the date that the "loss" occurred; (b) Chameleon's present legal right of access to the Bay City Site in view of the sublease given to Landrum; (c) the present status of the KFCC(AM) transmission facility at the Bay City Site, and if the status has been changed, the date of any such change and all details concerning the nature and extent of that change; and (d) the present address of the KFCC(AM) main studio.
2. Furnish a showing demonstrating that no better site - other than the Harris County Site - exists from which KFCC(AM) can maintain coverage as closely as possible to the licensed service, including principal community contour coverage of Bay City, Texas.
3. Provide: (a) the name, address and telephone number of the [Harris County Site] owner; (b) any lease or written agreement providing for Chameleon's access to the site; (c) whether Chameleon's principals, or its officers or directors, directly or indirectly, ordered construction of a tower on that site and if so, the date construction of the tower began; (d) the name, address and telephone number of the tower construction contractor; and (e) provide a copy of the FAA filing discussed in the April 21, 1995 STA request and a copy of the FAA Determination of No Hazard.
4. Provide the exact date of consummation of the assignment of KFCC(AM) from Landrum to Chameleon (BAL-950216EA).

After not having received a request for extension of the STA or a timely response to the Inquiry Letter, the Commission staff issued a letter on August 11, 1995 informing Chameleon that the STA had been terminated ("Rescission Letter 2").<sup>5</sup> On August 11, 1995, Chameleon faxed a date-stamped copy of its extension request and response to the Inquiry Letter ("Response Letter"). Chameleon stated that a copy of this letter had been mailed to the Commission on August 4, 1995.<sup>6</sup> By letter dated August 11, 1995, the Commission staff

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<sup>5</sup> See August 11, 1995 Letter from Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger.

<sup>6</sup> On August 25, 1995, Whitehead faxed a reply to the Response Letter to the Chief, Audio Services ("Reply"). In that letter, Whitehead challenges Chameleon's statements of fact contained in the Response Letter and renews his request for termination of the STA. We will consider the issues raised by the Reply and incorporate those allegations with his earlier-filed

stayed Rescission Letter 2 pending study of the material submitted in the Response Letter.<sup>7</sup> Meanwhile, on August 4, 1995, Chameleon had filed an application on FCC Form 301 to change KFCC(AM)'s community of license from Bay City, Texas, to Missouri City, Texas, and to modify the station's facilities to operate from the Harris County Site.

With respect to the specific questions identified above, the Response Letter provides the following:

(1) Question 1: Chameleon provides no further information to support its claim in the STA request that it needed to relocate the KFCC(AM) transmitter "[d]ue to the loss of its currently licensed site." Chameleon also does not discuss its present legal right of access to the Bay City Site. Additionally, the Response Letter does not address the present status of KFCC(AM)'s licensed facility at the Bay City Site or any technical changes, if any, that may have taken place at that site. Furthermore, Chameleon does not identify the current location of the KFCC(AM) main studio. Chameleon's only responsive statements regarding the STA are: (1) that it was "making creative use of whatever rules presented themselves in order to save both its business and the outlet it had created for the international community in Houston . . . ." Response Letter at 17; and (2) that it "has gone to the outer limits in dealing with the Commission's Rules regarding Special Temporary Authorization. . . ." Response Letter at 19.

(2) Question 2: Chameleon provides no information indicating that it had considered any other site by which KFCC(AM) could maintain its presently licensed service to Bay City.

(3) Question 3: Chameleon states that the tower is owned by Mr. Joe McClish of Economy RF Construction Company, an Austin Texas Communication Company. Response Letter at 10. Chameleon indicates that Mr. McClish, in the course of an April 26, 1995 telephone conversation, expressed his interest in owning the tower and agreed to erect it before May 1, 1995. *Id.* Chameleon also states that none of its funds were expended for the tower's construction and that no "broadcast equipment was placed on the site until after the grant of the STA." *Id.* Chameleon reports that installation of broadcast equipment on the site began immediately upon grant of the STA and was completed by May 7, 1995. *Id.* Chameleon contends that this tower does not require FAA approval. *Id.* Chameleon does not, however, submit a copy of the FAA filing discussed in its April 21, 1995 STA request.

(4) Question 4: Chameleon states that the closing of the assignment from Landrum occurred on April 20, 1995.

Discussion. Based upon our careful review of the Response Letter, we conclude that

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objection noted above.

<sup>7</sup> See August 11, 1995 Letter from Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger.

Chameleon's April 21, 1995 stated basis for the STA -- "loss of its currently licensed site" -- is not supported by the facts in the record. Our policy is to require that the site "loss" be beyond the applicant's control before granting STA.<sup>8</sup> Based upon material submitted in the Response Letter, Chameleon appears to have voluntarily abandoned its licensed site, and its licensed Bay City, Texas, broadcast service, in order to fulfill identified contractual obligations. In the Response Letter, Chameleon discusses in great detail a Houston licensee's decision to terminate a programming agreement made between the licensee's predecessor and a Chameleon-affiliated programming supplier.<sup>9</sup> Under this agreement, Chameleon had supplied programming produced by various international broadcasters to that licensee's Houston station. Upon receiving a notice of the agreement's termination from the licensee, Chameleon "moved with all haste toward finding an acceptable transmitter site in southwest Houston to which it could move." Response Letter at 9. The "need" for an acceptable Houston broadcast signal thus appears to have formed the basis for Chameleon's STA request rather than a "loss" of site that was beyond Chameleon's control.<sup>10</sup> Chameleon's contractual obligations to programmers seeking a Houston broadcast service do not provide a basis for granting STA that deprives Bay City, Texas, of a licensed service that it has enjoyed for more than forty years.

We find that Chameleon's use of STA to introduce a new broadcast service to Houston, Texas is both a violation of our STA policies and the licensing procedures of the Communications Act of 1934, as amended (the "Act"). Section 309 of the Act provides that the Commission may not grant an application for facility modifications of the type represented by Chameleon's STA until the Commission staff has examined the subject application, provided a public notice of the acceptance of the application for filing and allowed a thirty-

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<sup>8</sup> Section 73.1635(a) of the Commission's Rules provides for the issuance of an "STA to a licensee to permit the operation of a broadcast facility for a limited period at a specific variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station." 47 C.F.R. §1635(a). Any STA request must "fully describe the proposed operation and the necessity for the requested STA." 47 C.F.R. § 73.1635(a)(2).

<sup>9</sup> According to the Response Letter, Chameleon's principal was also the principal of the subject programming supplier.

<sup>10</sup> Whitehead contends that Chameleon's abandonment of the Bay City Site may have been voluntary. In documents associated with the above-referenced assignment of license from Landrum, we note that Chameleon assigned the rights of some portion of the Bay City Site back to Landrum. The Response Letter fails to address our question regarding what legal rights Chameleon has with respect to the Bay City Site, in view of that assignment of lease rights. Chameleon has also not responded to our query regarding the condition of the licensed Bay City Site's transmission facilities. We note, however, that the Commission's records indicate that Landrum was operating KFCC(AM) from that site at the time of the assignment of license to Chameleon.

day period for comment on the application by relevant parties. 47 U.S.C. § 309. To the extent that Chameleon's admitted "creative use" of the STA is an attempt to foreshorten the statutory procedures mandated by the Act, we decline to permit circumvention of those requirements by use of STA.<sup>11</sup>

We further note that it is not our policy to authorize new construction intended to be for permanent operations pursuant to STA. The Commission staff rejected Chameleon's April 21, 1995 STA request because it proposed constructing a new permanent tower. Chameleon's amended May 2, 1995 exhibit had removed the term "new" and instead indicated that the tower to be used was an "existing" structure. We note, however, that the Response Letter provides conflicting dates as to when the tower was actually erected on the Harris County Site.<sup>12</sup> The Response Letter does state, though, that its "agreement" with the tower contractor to erect a tower on the Harris County Site was confirmed in a telephone conversation on April 26, 1995. Response Letter at 10. Therefore, we conclude that the tower was constructed sometime between April 26 and May 8, the date that Chameleon reports it began operations from the Harris County Site. Response Letter at 12. Because it appears that this tower was erected for the primary purpose of providing service under the STA, and with the intention of it becoming a permanent structure for operations (see May 2, 1995 letter from Chameleon), we find that extending the STA under such conditions would clearly violate our established STA policy.

We wish to address two remaining matters regarding the Response Letter. First, Chameleon states that "after very careful consideration that Mr. Werlinger made the decision to disregard [the Recession Letter]." Response Letter at 15. We caution Chameleon, and note herein, that pursuant to Section 503(b) of the Act unauthorized operation of a broadcast station can subject a licensee to forfeiture. Second, we note that Chameleon failed to address several specific questions in the Inquiry Letter. We remind Chameleon that it is a violation of Commission Rules to make a "willful material omission bearing on any matter within the jurisdiction of the Commission." 47 C.F.R. § 1.17. In any event, for the purposes of our determination as to whether the STA should be extended, we need not require additional information from Chameleon concerning aspects of that STA operation. However, with respect to our specific question concerning the specific present location of the KFCC(AM) main studio, we note that absent limited exceptions, a licensee may not remove a station's

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<sup>11</sup> We note that Chameleon's subsequent filing of an FCC Form 301 application seeking a construction permit to build permanent facilities at the Harris County Site and to change KFCC(AM)'s community of license to Missouri City, Texas does not provide an independent basis supporting extension of the subject STA.

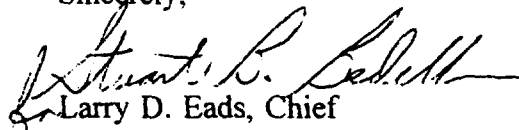
<sup>12</sup> At one point Chameleon states that "[b]y Monday, May 1, 1995 the Rohn model 25 tower was in place." Response Letter at 10. Subsequently, Chameleon states that "working nonstop, the Chameleon crew had the tower in the air by 8:30 pm, Saturday May 6." Response Letter at 24.



main studio outside of the station's principal community contour without first securing the appropriate authorization. See 47 C.F.R. § 1125(b). Second, if a main studio is relocated pursuant to Sections 1125(b)(3)(i), (ii), proper notification must be made to the Commission. See 47 C.R.R. § 1125(b)(3)(iii). If Chameleon has relocated the KFCC(AM) main studio under either circumstance noted above, Chameleon must promptly file the required information in conformance with 47 C.F.R. § 11.25(b)(3)(iii).

Conclusion. The objection filed by Tom S. Whitehead IS GRANTED to the extent indicated herein. The objection filed by South Texas Broadcasting, Inc. IS DISMISSED. The August 4, 1995 request for extension of STA filed by Chameleon Radio Corporation IS DENIED. Pursuant to 47 C.F.R. § 73.1635(a)(5)(b),<sup>13</sup> the May 5, 1995 STA -- as modified by the Commission's letter of May 12, 1995 -- IS CANCELLED. KFCC(AM) must immediately cease operation from the Harris County Site. Further operation from the Harris County Site will subject Chameleon to daily forfeitures calculated in accordance with Section 503(b) of the Act. Station KFCC(AM) must resume operations from its licensed site in Bay City, Texas.<sup>14</sup>

Sincerely,

  
Larry D. Eads, Chief  
Audio Services Division  
Mass Media Bureau

cc: James P. Riley, Esquire  
Counsel for South Texas Broadcasting, Inc.  
John Joseph McVeigh, Esquire  
Counsel for Tom S. Whitehead  
CIB Houston

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<sup>13</sup> Pursuant to 47 C.F.R. § 73.1635(a)(5)(b), the Commission may modify or cancel without prior notice or hearing any STA.

<sup>14</sup> We also remind Chameleon that 47 C.F.R. § 73.1740(a)(4) provides that licensees must seek authority from the Commission to remain silent within ten (10) days of the discontinuance of operations. Such authorizations pertain only to an applicant's licensed site. Requests for silent authority pursuant to this Rule must be supported by a showing that factors beyond the licensee's control prevent the continuance of on-air service.